IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.16022 of 1999

Between:

G.Pullam Raju, S/o. late Venkatarama Raju, R/o.Gollalakoderu Village, Palakoderu Mandal, West Godavari District.

..... PETITIONER

AND

1 District Collector, West Godavari District, Eluru.
2 Mandal Revenue Officer, Palakoderu, West Godavari District.
3 Excise Superintendent, West Godavari District, ELuru.
4 Assistant Engineer, P.W.D., Bhimavaram, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus or any appropriate writ, order or direction declaring the action of the respondent in granting lease to the 3rd parties in respect of the palamyrah trees situated in the land which is in petitioner's possession an enjoyment measuring 0.39 cents in R.s.No.313/2A1/3, of Gollalakoderu (V), Palakoderu Manadal, W.G.District as illegal arbitrary, high-handed and violative of principles of natural justice and for a consequential order directing the respondents not to grant lease to the 3rd parties in respect of palamyrah trees situated in the land which is in possession of petitioner and enjoyment in R.S.No.313/2A1/3, of Gollakakoderu (V), Palakoderu Mandal, W.G.District.

Counsel for the Petitioner: MR.CH.DHANAMJAYA

Counsel for the Respondent Nos.1 to 4: GP FOR PROHIBITION & EXCISE

The Court made the following:

ORDER:

The petitioner is admittedly an occupant of Government poramboke land admeasuring Acs.0.39 in R.S.No.313/2A1/3 of Gollalakoderu village in Palakoderu Mandal of West Godavari District. The petitioner raised coconut trees and was also enjoying 47 palmyrah trees, which were standing on the Government land. The petitioner approached the revenue authorities for issue/alienation of the Government land, contending that he raised coconut trees and was paying tree tax to Irrigation department for enjoying the usufruct of the coconut trees. Be that as it is, it is the case of the petitioner that when his application for issue/alienation of the Government land was under active consideration of the revenue department, pursuant to an order passed by this Court on 13.11.1997 in W.P.No.24005 of 1997, the respondents herein making attempts to grant lease in respect of 47 palmyrah trees for tapping toddy. Therefore, he filed the present writ petition seeking declaration that the action of the third respondent in taking steps to grant lease of the palmyrah trees in the Government land, which is in occupation of the petitioner, is illegal and arbitrary.

It is no doubt true that under Section 24 of the A.P. Excise Act, 1968 (the Act, for brevity) unless and until the owner of the land where the palmyrah trees are standing gives consent, the toddy trees cannot be tapped. When once the owner of the trees gives consent he is only entitled for tree tax payable as per the rules (see Section 26 of the Act). The exclusive privilege to enjoy the toddy trees is conferred only on the owner of the land and not an encroacher or occupant. Admittedly, the petitioner is an encroacher in occupation of the Government land and therefore, he cannot prevent the Government to put its property to the best use. The petitioner has no right as such which can be enforced. As and when the petitioner's occupation is regularized by the Revenue department by grant of assignment or order for alienation, it shall be open to the petitioner to exercise his right under Section 24 of the Act. The writ petition is misconceived.

The writ petition, subject to the above observations, is dismissed.

(V.V.S.RAO,J)

08.6.2005

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To

1 The District Collector, West Godavari District, Eluru.
2 The Mandal Revenue Officer, Palakoderu, West Godavari District.
3 The Excise Superintendent, West Godavari District, ELuru.
4 The Assistant Engineer, P.W.D., Bhimavaram, West Godavari District.

5 Two CCs to the Government Pleader for Prohibition & Excise,

High Court Buildings, Hyderabad. (OUT)

6 Two C.D. Copies.